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**INFILL AND RESIDENTIAL DEVELOPMENT STUDY
TREE PRESERVATION TEAM
RECOMMENDATIONS**

**TP 3
CONSERVATION EASEMENTS**

ISSUE: Provide mechanisms for long-term protection of forested areas preserved during development of infill residential parcels.

IDEA: Allow for, and encourage the placement of, conservation easements on common open space for the purposes of tree preservation and to meet stormwater management requirements.

RESEARCH: The issue of conservation easements was evaluated recently by two separate groups: the Tree Preservation Task Force, and an interagency team assigned to research open space easements.

The 1999 Tree Preservation Task Force made two recommendations regarding conservation easements: “Request that staff, during the negotiation process of zoning cases, request conservation easements to provide long-term protection for designated tree preservation areas,” and “Evaluate the use of conservation easements on individual lots. Determine the appropriateness of allowing conservation easements on private lots to be counted toward BMP credits.” The discussion sections contained in the 1999 Tree Preservation Task Force’s Final report to the Board of Supervisors for the two relevant recommendations were reviewed and discussed prior to analysis of this issue.

The interagency team assigned to research open space easements was requested by the Board of Supervisors to review how the County can better implement the existing Open Space Easements policy, based on the Virginia Open Space Land Act. The interagency team assigned to review the Open Space Program prepared a report to the Board entitled “Open Space Easements Report” dated May 8, 2000. Their report is referenced here because some of the research conducted by the interagency team was used in the preparation of this issue paper. It should be noted that the term “conservation easements” is used in the context of this issue paper as a name for easements placed on land for the perpetual preservation of natural resources for the purpose of stormwater management (for quality or quantity measures) or for tree and landscape buffer preservation. The County’s Open Space Easements Program is separate from these conservation easements and broader in scope, encompassing all the purposes of the Open Space Land Act.

Parcels containing conservation easements continue to be owned by the property owner on whose land the easement exists; however, the easement provides certain protections and provides for access by the easement holder. The easement holder is typically a non-profit organization or a governing body. In Fairfax County conservation easements are usually held by the Board of Supervisors, although the Park Authority also holds conservation easements for park purposes.

ANALYSIS: There are several tools available for ensuring the protection of environmentally sensitive areas. Through the review of rezoning, special exception, special permit, and variance

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applications, commitments through proffers or development conditions can be obtained regarding the preservation of certain forested areas or individual trees. These commitments run with the land and as such are considered long-term protections. Common open space is protected from clearing through provisions in the Zoning Ordinance that require permission from the County prior to doing work in the designated areas. Special protections through ordinance requirements are also afforded floodplains and Chesapeake Bay Resource Protection Areas. These protection measures are long-term and run with the land, but they could potentially be revised through established processes. Conservation easements are a perpetual protection measure which can be sought during the review of the applications noted above, or can be provided on by right developments, to meet certain stormwater management water quality requirements or for other purposes.

If, during the review of rezoning, special exception, special permit or variance applications, staff determines that an extra measure of protection would be beneficial to protect an area not protected through some other means, staff has the option to request the placement of conservation easements on appropriate areas of common open space to ensure perpetual protection. Appropriate areas for requesting conservation easements include forested areas that warrant protection beyond the protection already afforded open space through the provisions of the Zoning Ordinance, such as areas that contain heritage or specimen trees; areas that are connected to other environmentally sensitive areas but are not provided protection through some other regulation; and areas that offer some other environmental benefit such as specialized wildlife habitat. Staff has requested the establishment of these types of conservation easements and has received commitments from several applicants in this regard.

While placing conservation easements on common open space may be appropriate for the preservation of certain environmentally sensitive forested areas, there are several concerns about the impact of placing conservation easements on individual lots. If the purpose of the easement is to preserve forested areas for either their intrinsic value or for water quality benefits for stormwater management, the placement of conservation easements on individual lots is not recommended as it presents monitoring and enforcement difficulties. On all easements it holds, the County reserves the right to enter the property to conduct inspections and ensure compliance with the requirements of the easement. When easements are placed on individual lots, the ability of County staff to enter the property may be challenged by the property owner. In addition, when properties are sold, new owners may not be aware of the restrictions placed on the property.

EFFECTS: Implementation of this recommendation would result in the continuation of existing practices, while bringing attention to the need for the long-term protection of conservation easements in certain circumstances. The use of this preservation tool should continue to be limited to those areas that warrant perpetual protection due to the attributes listed above.

TEAM RECOMMENDATION: Conservation easements on common open space should continue to be pursued where appropriate in order to provide perpetual protection for appropriate forested areas.